Remarks

Applicant respectfully requests reconsideration of this application as amended.

Claims 1-2, 4-15 and 17-18 and 20 have been amended. Claims 10, 16 and 21-25 have been

cancelled. Therefore, claims 1-9, 11-15 and 17-20 are presented for examination.

35 U.S.C. §102(e) Rejections

Claims 1-2, 10-12 and 20 stand rejected under U.S.C. §102(e) as being anticipated by

Keller et al. (U.S. Patent No. 6,289,396) ("Keller").

Keller discloses a device driver architecture. (See Keller at Abstract). Keller further

discloses that the upper level of the device driver architecture includes a kernel layer that

connects to the device driver through an operating system API. The API provides the

operating system kernel and any extensions with entry points into the device driver. (See

Keller at col. 7 lines 46-50).

Claim 1 recites:

> A computer-implemented method comprising:
> distributing a device driver to execute functionality
> under command from a kernel, wherein the device driver
> includes code defining functionality associated with the
> device driver and <u>excludes a header, wherein the header
> includes</u> unique symbols associated with the kernel and
> <u>version identification data of the kernel</u>; and
> distributing the device driver which, when run on a
> computer, <u>dynamically creates the header information for
> the device driver by obtaining the version identification
> data and the associated unique symbols from the kernel</u>.

Applicant submits that Keller does not disclose or suggest excluding version

identification data of the kernel and dynamically creating header information for the device

driver by obtaining the version identification data and the associated unique symbols from

the kernel. The Examiner states in the Office Action mailed November 4, 2005 that "Keller discloses . . . exclude[ing] version identification data, for the computer program module to execute . . . [at] col. 7, lines 47-50 'The kernel layer 54.'" (See Office Action mailed November 4, 2005 at page 6, lines 3-8). Applicant submits that the kernel layer 54 does not disclose or suggest excluding version identification data of the kernel. In fact, nowhere in Keller can the applicant find any disclosure or suggestion of excluding the version identification data of the kernel. Accordingly, for at least the reasons stated above with respect to claim 1, applicant respectfully submits that claim 1 is patentable over Keller.

Claims 2-9 depend from claim 1 and include additional features. Therefore, claims 2-9 are also patentable over Keller.

Claim 11 also recites, in part, excluding version identification data of the kernel and dynamically creating the header information for the device driver by obtaining the version identification data and the associated unique symbols from the kernel. Similar to the discussion above, Keller does not disclose or suggest such a feature. Therefore, claim 11 is patentable over Keller for the reasons discussed above with respect to claim 1. As claims 12-15 and 17-20 depend from claim 11 and include additional features, claims 12-15 and 17-20 are also patentable over Keller.

Claims 21-25 stand rejected under 35 U.S.C. §102(e) as being anticipated by Lin et al. (U.S. Publication No. 2003/0101290) ("Lin"). Claims 21-25 have been cancelled thus obviating this rejection. Applicant respectfully requests that rejection be withdrawn.

35 U.S.C. §103(a) Rejections

Claims 1-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lin.

Lin discloses a system and method for providing device driver support in an open source operating system. The device driver includes an open source operating system, including an open source kernel, is constructed from an open source service layer and a set of precompiled driver modules. The system of Lin allows for an open source operating system that permits computer system manufacturers to provide device drivers for its computer systems, while preventing the disclosure of sensitive proprietary information in those device drivers. (See Lin at pg. 2, paragraphs [0009] – [0011]).

Claim 1 recites:

> A computer-implemented method comprising:
> distributing a device driver to execute functionality under command from a kernel, wherein the device driver includes code defining functionality associated with the device driver and excludes a header, wherein the header includes unique symbols associated with the kernel and version identification data of the kernel; and
> distributing the device driver which, when run on a computer, <u>dynamically creates the header information for the device driver by obtaining the version identification data and the associated unique symbols from the kernel.</u>

Applicant submits that Lin does not disclose or suggest dynamically creating header information for the device driver by obtaining the version identification data and the associated unique symbols from the kernel. Lin discloses preventing the disclosure of sensitive proprietary information in device drivers. However, nowhere does Lin disclose or suggest dynamically creating header information for the device driver by obtaining the version identification data and the associated unique symbols from the kernel.

Additionally, applicant respectfully submits that it would not have been obvious at the time of invention to exclude version identification data of a kernel in a device driver. The Examiner is respectfully reminded that in order to establish a *prima facie* case of obviousness *there must be some suggestion or motivation in the reference*, for one of ordinary skill in the art, to modify the reference, and the reference *must teach or suggest all the claim limitations*. (See *In re Vaech*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) and Manual of Patent Examining Procedure (MPEP), 8th Edition, Revision 2, May 2004, §2143; emphasis provided). Applicant submits that there is no motivation in Lin to exclude version identification data.

The Examiner asserts that paragraph 11 of Lin, which states, "preventing the disclosure of sensitive proprietary information" is the motivation for Lin to exclude version identification data. Applicant respectfully disagrees with the Examiner's assertion. Version identification data of a kernel is not sensitive and is readily know to the public. Accordingly, because the invention in Lin is concerned with preventing the disclosure of sensitive proprietary information there would have been no motivation to exclude non-sensitive publicly know information such as version identification data of a kernel. Accordingly, for at least the reasons stated above, claim 1 is patentable over Lin.

Claims 2-9 depend from claim 1 and include additional features. Therefore, claims 2-9 are also patentable over Lin.

Claim 11 also recites, in part, dynamically creates the header information for the device driver by obtaining the version identification data and the associated unique symbols from the kernel. Similar to the discussion above, Lin does not disclose or suggest such a feature. Therefore, claim 11 is patentable over Lin for the reasons discussed above with

respect to claim 1. As claims 12-15 and 17-20 depend from claim 11 and include additional features, claims 12-15 and 17-20 are also patentable over Lin.

Claim 9 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Keller. Dependant claim 9 depends from and necessarily includes the limitations of independent claim 1. Accordingly, applicant respectfully requests that the rejection be withdrawn.

Claims 3-8 and 13-19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Keller in view of 'Linux Home Page' as posted 12/01/2001 ("Linux"). Dependant claims 3-8 and 13-19 depend from and necessarily include the limitations of independent claims 1 and 11. Accordingly, applicant respectfully requests that the rejection be withdrawn.

Claims 21 and 23-25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Carney et al. (U.S. Patent No. 5,303,392) ("Carney") in view of Linux. Claims 21 and 23-25 have been cancelled thus obviating this rejection. Applicant respectfully requests that rejection be withdrawn.

Claim 22 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Lin in view of Siegel (U.S. Patent No. 6,298,440) ("Siegel"). Claim 22 has been cancelled thus obviating this rejection. Applicant respectfully requests that rejection be withdrawn.

Applicant respectfully submits that the rejections have been overcome and that the claims are in condition for allowance. Accordingly, applicant respectfully requests the rejections be withdrawn and the claims be allowed.

The Examiner is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.
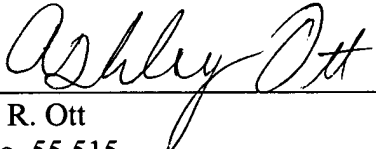
Applicant respectfully petitions for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17(a) for such an extension.

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: <u>February 6, 2006</u>

_____

Ashley R. Ott
Reg. No. 55,515

12400 Wilshire Boulevard
7th Floor
Los Angeles, California 90025-1026
(303) 740-1980